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6                   UNITED STATES DISTRICT COURT  
7                   EASTERN DISTRICT OF WASHINGTON  
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9                   ROBERT G. F. SHIELDS,  
10                   Plaintiff,  
11                   v.  
12                   CAROLYN W. COLVIN, Acting  
13                   Commissioner of Social Security,  
14                   Defendant.

15                   NO. CV-11-240-RHW  
16

17                   **ORDER DENYING PLAINTIFF'S  
18 MOTION FOR SUMMARY  
JUDGMENT; GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

19                   Before the Court are Plaintiff's Motion for Summary Judgment, ECF No. 13  
20 and Defendant's Motion for Summary Judgment, ECF No. 18. The motions were  
21 heard without oral argument. Plaintiff is represented by Rebecca M. Coufal.  
22 Defendant<sup>1</sup> is represented by Pamela De Rusha and Debra Meachum.

23                   **I. Jurisdiction**

24                   On June 21, 2007, Plaintiff Robert Shields filed an application for disability  
25 insurance under Title II of the Social Security Act, and on September 28, 2008,  
26 filed an application for Supplemental Social Security Income (SSI) under Title  
27 XVI. Plaintiff alleged he had been disabled since November 2, 2002. However, at

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<sup>1</sup>Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2013. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn W. Colvin is substituted for Michael J. Astrue as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of 42 U.S.C. § 405(g).

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1 the hearing, Plaintiff amended his onset date to November 1, 2005.

2 His application was denied initially on July 4, 2007, and again denied on  
3 reconsideration on June 18, 2008. A timely request for a hearing was made. On  
4 May 3, 2010, Plaintiff appeared in Olympia, Washington by video conference  
5 before Administrative Law Judge (ALJ) Greg G. Kenyon, who was located in  
6 Houston, Texas. Wallace A. Stanfill, vocational expert, also participated. Plaintiff  
7 was represented by attorney Jeanette Laffoon.

8 The ALJ rendered an unfavorable decision for the Plaintiff on May 25,  
9 2010. The ALJ found that Plaintiff was not disabled at any time from the date the  
10 application was filed through the date of decision. Plaintiff timely requested  
11 review by the Appeals Council, which was denied April 29, 2011. The Appeals  
12 Council's denial of review makes the ALJ's decision the final decision of the  
13 Commissioner. 42 U.S.C. §405(h).

14 Plaintiff filed an appeal with the U.S. District Court for the Eastern District  
15 of Washington on June 28, 2011. The instant matter is before the district court  
16 pursuant to 42 U.S.C. § 405(g).

## 17 II. Sequential Evaluation Process

18 The Social Security Act defines disability as the "inability to engage in any  
19 substantial gainful activity by reason of any medically determinable physical or  
20 mental impairment which can be expected to result in death or which has lasted or  
21 can be expected to last for a continuous period of not less than twelve months."  
22 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be  
23 under a disability only if his impairments are of such severity that the claimant is  
24 not only unable to do his previous work, but cannot, considering claimant's age,  
25 education and work experiences, engage in any other substantial gainful work  
26 which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

27 The Commissioner has established a five-step sequential evaluation process  
28 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a)(4),

1 416.920; *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987).

2       Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R.  
 3 §§ 404.1520(b), 416.920(b). Substantial gainful activity is work done for pay and  
 4 requires compensation above the statutory minimum. 20 C.F.R. §§ 404.1574,  
 5 416.972; *Keyes v. Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is  
 6 engaged in substantial activity, benefits are denied. 20 C.F.R. §§ 404.1571,  
 7 416.920(b). If he is not, the ALJ proceeds to step two.

8       Step 2: Does the claimant have a medically-severe impairment or  
 9 combination of impairments? 20 C.F.R. §§ 404.1520(c), 416.920(c). If the  
 10 claimant does not have a severe impairment or combination of impairments, the  
 11 disability claim is denied. A severe impairment is one that lasted or must be  
 12 expected to last for at least 12 months and must be proven through objective  
 13 medical evidence. 20 C.F.R. §§ 404.1508-09, 416.908-09. If the impairment is  
 14 severe, the evaluation proceeds to the third step.

15       Step 3: Does the claimant's impairment meet or equal one of the listed  
 16 impairments acknowledged by the Commissioner to be so severe as to preclude  
 17 substantial gainful activity? 20 C.F.R. §§ 404.1520(d), 416.920(d); 20 C.F.R.  
 18 § 404 Subpt. P. App. 1. If the impairment meets or equals one of the listed  
 19 impairments, the claimant is conclusively presumed to be disabled. *Id.* If the  
 20 impairment is not one conclusively presumed to be disabling, the evaluation  
 21 proceeds to the fourth step.

22       Step 4: Does the impairment prevent the claimant from performing work he  
 23 has performed in the past? 20 C.F.R. §§ 404.1520(e), 416.920(e). If the claimant  
 24 is able to perform his previous work, he is not disabled. *Id.* If the claimant cannot  
 25 perform this work, the ALJ proceeds to the fifth and final step.

26       Step 5: Is the claimant able to perform other work in the national economy  
 27 in view of his age, education, and work experience? 20 C.F.R. §§ 404.1520(f),  
 28 416.920(f).

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1       The initial burden of proof rests upon the claimant to establish a *prima facie*  
 2 case of entitlement to disability benefits. *Tackett v. Apfel*, 108 F.3d 1094, 1098  
 3 (9th Cir. 1999). This burden is met once a claimant establishes that a physical or  
 4 mental impairment prevents him from engaging in his previous occupation. *Id.* At  
 5 step five, the burden shifts to the Commissioner to show that the claimant can  
 6 perform other substantial gainful activity. *Id.*

7 **III. Standard of Review**

8       The Commissioner's determination will be set aside only when the ALJ's  
 9 findings are based on legal error or are not supported by substantial evidence in  
 10 the record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)  
 11 (citing 42 .S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"  
 12 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance."  
 13 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9th Cir. 1975). Substantial  
 14 evidence is "such relevant evidence as a reasonable mind might accept as adequate  
 15 to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must uphold the  
 16 ALJ's denial of benefits if the evidence is susceptible to more than one rational  
 17 interpretation, one of which supports the decision of the administrative law judge.  
 18 *Batson v. Comm'r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9<sup>th</sup> Cir. 2004). "If the  
 19 evidence can support either outcome, the court may not substitute its judgment for  
 20 that of the ALJ." *Matney*, 981 F.2d at 1019.

21       A decision supported by substantial evidence will be set aside if the proper  
 22 legal standards were not applied in weighing the evidence and making the  
 23 decision. *Brawner v. Secretary of Health & Human Servs.*, 839 F.2d 432, 433 (9th  
 24 Cir. 1988). An ALJ is allowed "inconsequential" errors as long as they are  
 25 immaterial to the ultimate non-disability determination. *Stout v. Comm'r, Soc. Sec.*  
 26 *Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006). When a Title II claimant's period of  
 27 eligibility for disability benefits expires on a specific date, as here, it is the  
 28 claimant's burden to prove he was either permanently disabled or subject to a

1 condition that became so severe as to disable him prior to that date. *Armstrong v.*  
 2 *Comm'r of the Soc. Sec. Admin.*, 160 F.3d 587, 589 (9<sup>th</sup> Cir.1998).

3 **IV. Statement of Facts**

4 The facts have been presented in the administrative transcript and the ALJ's  
 5 decision, and only will be summarized here.

6 At the time of the hearing, Plaintiff was forty-eight. He graduated from high  
 7 school but reports he was in special education classes. He is functionally illiterate.  
 8 Plaintiff completed a one-year motorcycle maintenance course at the community  
 9 college, but it took him two years to complete it. He received tutoring and the  
 10 Institute for the Blind provided books on tape. Plaintiff also reported that all of his  
 11 tests were given orally. Testing shows that Plaintiff reads at a first or second grade  
 12 level.

13 His relevant past work experience is driving trucks. Plaintiff was a member  
 14 of the Teamsters. He worked in Iraq as a truck driver for a civilian contractor. In  
 15 2005, Plaintiff injured his left knee. Plaintiff has not had substantial gainful  
 16 employment since returning from Iraq.

17 At the time of the hearing, Plaintiff lived with his mother, who has since  
 18 passed away. He has one or two drinks a week, and does not use drugs. He takes  
 19 Aleve for pain. He smokes an occasional cigar. Plaintiff has no children and was  
 20 married once. He has had some run-ins with law enforcement. He has spent 30  
 21 days in jail in 1983 for a driving offense. He does not require assistance for  
 22 personal care, cooking, shopping, laundry or driving. He rides his motorcycle  
 23 occasionally with the average trip being 40 to 50 miles. He also tries to exercise by  
 24 walking, doing sit-ups and stretching. He estimates he could stand or walk for  
 25 about 15-20 minutes with a cane, and could sit for a half an hour to an hour.

26 Plaintiff asserts that left knee and low back pain, mental issues, obesity, and  
 27 diabetes prevent him from holding a full time employment. He states he gets  
 28 frustrated easily, and referred to an incident where he got into a physical

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1 altercation with his boss.

2 **V. The ALJ's findings**

3 The ALJ found that Plaintiff met the insured status requirements of the  
 4 Social Security Act through September 30, 2008.

5 At step one, the ALJ found that Plaintiff had not engaged in substantial  
 6 gainful activity since the amended alleged date of disability, November 1, 2005.  
 7 (Tr. 15.)

8 At step two, the ALJ found Plaintiff had severe impairments: degenerative  
 9 joint disease of the left knee, mild to moderate degenerative disc disease, probable  
 10 mild carpal tunnel syndrome, obesity, adjustment disorder NOS, personality  
 11 disorder, and a learning disorder resulting in functional illiteracy. (Tr. 15.)

12 At step three, the ALJ found that Plaintiff's impairments, or combinations of  
 13 impairments, did not meet or equaled the impairments listed in Appendix 1. 20  
 14 CFR Part 404, Subpart P, Appendix 1. (Tr. 15-16.) The ALJ indicated that he  
 15 considered Plaintiff's obesity in determining the residual functional capacity. (Tr.  
 16.) He concluded that Plaintiff's mental impairments do not meet or medically  
 17 equal the criteria of listings 12.02, 12.04, 12.08, and 12.09. (Tr. 16.)

18 The ALJ found that Plaintiff had the Residual Functional Capacity (RFC)  
 19 to perform light work. (Tr. 17.) Additional limitations include: the need to sit and  
 20 stand at will; no crawling, crouching or kneeling; occasional stooping, balancing  
 21 and climbing of ramps and stairs; no climbing of ladders, ropes, or scaffolds; no  
 22 work around hazards; no frequent use of hands for handling or fingering; limited  
 23 to unskilled, simple, repetitive tasks; occasional contact with coworkers and  
 24 supervisors; and no contact with the general public. (Tr. 17.)

25 At step four, the ALJ found Plaintiff unable to do past relevant work as a  
 26 truck driver, which was medium level and semiskilled. (Tr. 19.)

27 At step five, the ALJ found there were jobs in the national economy that  
 28 Plaintiff could do, considering his age, education, work experience, and residual

1 functional capacity. (Tr. 19-20.) Specifically, the ALJ found Plaintiff could  
2 perform the work of an office cleaner, electronics worker, and small products  
3 assembler. (Tr. 20.) The ALJ used the testimony of a vocational expert in making  
4 the decision. (Tr. 20.)

5 **VI. Issues for Review**

6 Plaintiff presents the following issues with respect to the ALJ's findings:

7 1) the ALJ erred in not finding severe impairments of: diabetes, cognitive  
8 disorder, and personality disorder NOS;

9 2) the ALJ erred in improperly rejecting the opinions of Plaintiff's  
10 providers;

11 3) the ALJ erred in not fully developing the record;

12 4) the ALJ erred in finding Plaintiff not credible.

13 **VII. Discussion**

14 Plaintiff argues the ALJ ignored evidence of Plaintiff's diabetes and failed  
15 to consider how this might impact his work abilities. He also argues the ALJ  
16 ignored findings of his cognitive disorder and his personality disorder, and  
17 dismissed the findings without the assistance of a medical expert. Plaintiff  
18 maintains that without the input of a ME, it is impossible for the ALJ to determine  
19 the extent the impairments add to his work limitations.

20 To find a severe impairment or combination of severe impairments, an  
21 impairment must significantly limit the ability, physically or mentally, to do basic  
22 work activities. 20 C.F.R. §404.1520C.

23 Plaintiff was not diagnosed with diabetes until February 19, 2010 (Tr. 234,  
24 313-314.) His last date insured was September 30, 2008. Medical evaluations  
25 made after the expiration of a claimant's insured status are relevant to an  
26 evaluation of a pre-expiration condition. *Smith v. Bowen*, 849 F.2d 1222, 1225 (9<sup>th</sup>  
27 Cir. 1988). Plaintiff is not arguing, however, that he had a pre-existing condition  
28 of diabetes. Rather, he faults the ALJ with failing to consider the effect of his

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1 diabetes on his ability to work. He cannot rely on his diabetes to establish he was  
 2 disabled between November 1, 2005 and September 30, 2008 because there is  
 3 nothing in the record that establishes he had diabetes during this time.

4 Plaintiff argues the ALJ failed to adequately develop the record when he  
 5 failed to consult a medical expert. The ALJ has a special duty to fully and fairly  
 6 develop the record. *Smolen v. Chater*, 80 F.3d 1273, 1288 (9<sup>th</sup> Cir. 1996). A  
 7 specific provision of the Commissioner's Hearings, Appeals, and Litigation  
 8 manual ("HALLEX") gives the ALJ discretion in deciding whether ME testimony  
 9 is necessary, except in three situations where the use of a ME is mandatory: (1) the  
 10 Appeals Council or a court so orders; (2) to evaluate and interpret background  
 11 medical test data; and (3) when determining whether an impairment medically  
 12 equals a listing.<sup>2</sup> HALLEX, § I-2-5-34, 1994 WL 637370. None of these  
 13 circumstances apply to this case. Here, the ALJ did not abuse its discretion in not  
 14 consulting a medical expert. The record is well-developed. The ALJ discussed all  
 15 of the pertinent evidence in the record, and incorporated the limitations in the  
 16 residual functional capacity.

17 Dr. Regets set forth a functional capacity assessment that specifically  
 18 referred to Plaintiff's learning and cognitive disorders NOS, adjustment disorders  
 19 NOS and personality disorders with borderline & narcissistic features NOS. (Tr.  
 20 288.) Dr. Regets found that despite Plaintiff's impairments, he could understand,  
 21 remember and perform simple repetitive tasks on a sustained basis, but not more  
 22 detailed tasks, as evidenced by his prior work history, and that he would do best  
 23 learning hands-on tasks. (Tr. 228.) He should have superficial contact with few  
 24 coworkers, supervisors, and general public. (Tr. 288.) Although Plaintiff reported  
 25 past difficulties with supervisors and authority figures (police officers), Dr. Regets

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27 <sup>2</sup>HALLEX is a purely internal manual, is not binding, and as such, has no legal  
 28 force. See *Moore v. Apfel*, 216 F.3d 864, 868 (9<sup>th</sup> Cir. 2000).

1 noted that he managed to obtain and maintain employment and interpersonal  
2 relationships in the past. (Tr. 288.) The RFC reflects Plaintiff's moderate  
3 limitations to ability to understand and remember detailed instructions, carry out  
4 detailed instructions, and sustain an ordinary routine without special supervision,  
5 as well as moderate limitations in interacting with the general public, and  
6 accepting instructions and responding appropriately to criticism from supervisors.  
7 The ALJ considered the mental evaluations, including Plaintiff's learning and  
8 cognitive disorders, and personality disorder, and incorporated these limitations  
9 into the RFC. Thus, there was no error that warrants remand. *See Burch v.*  
10 *Barnhart*, 400 F.3d 676, 682-84 (9<sup>th</sup> Cir. 2005); *Lewis v. Astrue*, 498 F.3d 909, 911  
11 (9<sup>th</sup> Cir. 2007).

12 With respect to limitations caused by Plaintiff's left knee, Plaintiff saw Dr.  
13 King in November, 2005. (Tr. 218-19.) Dr. King reviewed an MRI scan. (Tr.  
14 215.) He diagnosed patellofemoral chondromalacia and strain of the medial  
15 patellofemoral ligament and recommended a steroid injection and physical  
16 therapy. (Tr. 215.) At a return visit in December, 2005, Plaintiff reported he  
17 experienced near complete resolution of his pain with patellofemoral taping,  
18 therapy and his injection, and he was doing quite well with no complaints. (Tr.  
19 214.)

20 Over two years later, on May 23, 2008, Dr. Marie Ho, M.D. completed a  
21 physical consultative exam. She noted that Plaintiff walked with a limp. Plaintiff  
22 reported using a cane on bad days, but he did not bring it to the examination. Dr.  
23 Ho observed that the left knee is deformed and turned outward compared to the  
24 right knee. (Tr. 295.) She also observed slight swelling of the left knee. (Tr. 294.).  
25 She limited Plaintiff's activities to standing and walking to at least two hours in an  
26 eight-hour workday due to limitations of the left knee, sit cumulatively up to six  
27 hours in an eight-hour workday, lifting and carrying is limited to 10 pounds  
28 occasionally and less than 10 pounds frequently due to limitations of the knee. (Tr.

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1 296.) Postural limitations including kneeling, crouching, and squatting (Tr. 296.)

2 On June 17, 2008, Dr. Turner completed a Physical RFC Assessment,  
 3 finding that Plaintiff's impairments would not preclude work activities, but  
 4 concluded that Plaintiff was limited to sedentary work activities. (Tr. 298-305.)  
 5 He concluded that Plaintiff could occasionally lift and/or carry 10 pounds, and  
 6 frequently lift and/or carry 10 pounds, stand and/or walk for a total of at least 2  
 7 hours, and sit for a total of about 6 hours in an 8 hour workday. (Tr. 299.)

8 A year later, on July 8, 2009, Dr. Zechmann saw Plaintiff and reviewed a  
 9 recent MRI and x-rays of both knees (Tr. 318.) Dr. Zechmann concluded there  
 10 were no significant abnormalities in his bilateral knees, and also noted that no  
 11 objective findings were present that would warrant any type of disability  
 12 classification. (Tr. 318-19.)

13 The ALJ gave greater weight to Dr. Zechmann's conclusions and less  
 14 weight to the other opinions in the record because these opinions did not have the  
 15 benefit of the MRI. This was proper. *See* 20 C.F.R. § 404.1527(c)(3) ("The more a  
 16 medical source presents relevant evidence to support an opinion, particularly  
 17 medical signs and laboratory findings, the more weight we will give that  
 18 opinion."). The ALJ also noted that prior medical records were based on  
 19 subjective complaints, with little objective evidence to substantiate Plaintiff's  
 20 allegations. (Tr. 19.) The ALJ did not err in giving significant weight to Dr.  
 21 Zechmann's opinion.

22 Plaintiff asserts the ALJ improperly discredited Plaintiff's testimony.  
 23 Here, the ALJ properly engaged in the two step process to evaluate Plaintiff's  
 24 testimony regarding subjective pain.<sup>3</sup> He found that while Plaintiff's medically  
 25

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26 <sup>3</sup>In order to find a claimant's testimony regarding severity of his impairments  
 27 unreliable, the ALJ must make "a credibility determination with findings  
 28 sufficiently specific to permit the court to conclude that the ALJ did not arbitrarily

1 determinable impairment could reasonably be expected to cause some of the  
 2 alleged symptoms, Plaintiff's statements concerning the intensity, persistence and  
 3 limiting effects of the symptoms were not credible to the extent they were  
 4 inconsistent with the ALJ's residual functional capacity assessment. (Tr. 18.)

5 An ALJ's assessment of a claimant's credibility is entitled to "great weight."  
 6 *Anderson v. Sullivan*, 914 F.2d 1121, 1124 (9<sup>th</sup> Cir. 1990). When there is no  
 7 evidence of malingering, the ALJ must give "'specific, clear and convincing  
 8 reasons'" for rejecting a claimant's subjective symptom testimony. *Molina v.*  
 9 *Astrue*, 674 F.3d 1104, 1112 (9<sup>th</sup> Cir. 2012) (citation omitted); *accord Taylor v.*  
 10 *Comm'r of Soc. Sec. Admin.*, 659 F.3d 1228, 1234 (9<sup>th</sup> Cir. 2011) (citing  
 11 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9<sup>th</sup> Cir. 2007)).<sup>4</sup> If the ALJ's

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12  
 13 discredit claimant's testimony." *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9<sup>th</sup>  
 14 Cir. 2008). (citation omitted). In doing so, the Court engages in a two-step  
 15 analysis. First, the ALJ must determine whether the claimant has presented  
 16 objective medical evidence of an underlying impairment 'which could reasonably  
 17 be expected to produce the pain or other symptoms alleged.'" *Lingenfelter v.*  
 18 *Astrue*, 504 F.3d 1028, 1036 (9<sup>th</sup> Cir. 2007). Once a "claimant meets this first test,  
 19 and there is not evidence of malingering, the ALJ can reject the claimant's  
 20 testimony about the severity of her symptoms only by offering clear and  
 21 convincing reasons for doing so." *Id.*

22 <sup>4</sup>Defendant argues the Court need only determine whether the ALJ properly  
 23 made "specific," cogent findings, supported in the record, for rejecting a  
 24 claimant's subjective symptom testimony, rather than "clear and convincing  
 25 evidence." Indeed, some cases have held that, at a minimum, an ALJ must make  
 26 specific, cogent findings, supported in the record, to reject a claimant's subjective  
 27 symptom testimony. *See, e.g., Berry v. Astrue*, 622 F.3d 1228, 1234 (9<sup>th</sup> Cir.  
 28 2010); *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir. 1990); *see also* Social

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1 credibility finding is supported by substantial evidence in the record, the  
2 reviewing court “may not engage in second-guessing.” *Thomas v. Barnhart*, 278  
3 F.3d 947, 959 (9th Cir. 2002).

4 In recognition of the fact that an individual’s symptoms can sometimes  
5 suggest a greater level of severity of impairment than can be shown by the  
6 objective medical evidence alone, 20 CFR 404.1529© and 416.929© describe the  
7 kinds of evidence, including the factors below, that the ALJ must consider in  
8 addition to the objective medical evidence when assessing the credibility of an  
9 individual's statements:

- 10 1. The individual’s daily activities;
- 11 2. The location, duration, frequency, and intensity of the individual’s pain or  
12 other symptoms;
- 13 3. Factors that precipitate and aggravate the symptoms;
- 14 4. The type, dosage, effectiveness, and side effects of any medication the  
15 individual takes or has taken to alleviate pain or other symptoms;
- 16 5. Treatment, other than medication, the individual receives or has received  
17 for relief of pain or other symptoms;
- 18 6. Any measures other than treatment the individual uses or has used to  
19 relieve pain or other symptoms (e.g., lying flat on his or her back, standing  
20 for 15 to 20 minutes every hour, or sleeping on a board); and
- 21 7. Any other factors concerning the individual’s functional limitations and

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22  
23 Security Ruling.(“SSR”) 96–7p (“When evaluating the credibility of an  
24 individual’s statements, the adjudicator must consider the entire case record and  
25 give specific reasons for the weight given to the individual's statements”). The  
26 majority of cases apply the clear and convincing standard. Out of an abundance of  
27 caution, this Court shall apply the arguably more rigorous “clear and convincing”  
28 standard.

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1       restrictions due to pain or other symptoms.

2 SSR 96-7P, 1996 WL 374186.

3       Here, the ALJ did not commit legal error in his consideration of Plaintiff's  
 4 testimony and did not err in not crediting Plaintiff's reports of his limitations  
 5 caused by his impairments. Moreover, the ALJ provided specific findings and  
 6 stated clear and convincing reasons in finding Plaintiff's testimony regarding his  
 7 limitations not credible. Notably, the ALJ relied on Dr. Zechmann's findings that  
 8 Plaintiff does not have significant knee problems, which is in direct contrast to  
 9 Plaintiff's claim that he is unable to work because of his left knee. Also, the ALJ  
 10 noted there was no demonstrated need for the cane that Plaintiff was using at the  
 11 hearing. Also, nothing in the record established Plaintiff's carpal tunnel syndrome.  
 12 The ALJ noted Plaintiff's daily activities including driving a car, driving a  
 13 motorcycle, grocery shopping, cooking, personal care, tinkering in his garage, and  
 14 exercising.<sup>5</sup> Here, substantial evidence supports the ALJ's credibility

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16       <sup>5</sup>Although Defendant provided a detailed analysis of Plaintiff's inconsistencies  
 17 surrounding his knee injuries, the ALJ did not set forth these inconsistencies in  
 18 finding Plaintiff not credible. *See Orn v. Astrue*, 495 F.3d 625, 630 (9<sup>th</sup> Cir. 2007)  
 19 (noting that courts will review only the reasons provided by the ALJ in the  
 20 disability determination and will not affirm the ALJ on a ground upon which he  
 21 did not rely). The various circumstances in the record as explained by Plaintiff  
 22 include:

23       1. Injured it in Iraq while climbing out of his truck, hitting his left knee and  
 24 twisting it (Dr. King, Tr. 219).

25       2. Injured it in Iraq after he jumped out of his truck, which was filled with  
 26 fuel, was taken out after being hit by an IED (Dr. van Dam, Tr. 265-66).

27       3. Injured it in Iraq when he was being shot at as he was stepping out of the  
 28 truck (Dr. Ho, Tr. 291). Obtained MRI and minor surgery while in Iraq to stabilize

1 determination.

2 Plaintiff has not met his burden of showing the ALJ committed legal error,  
 3 or that his conclusion that Plaintiff was not disabled from November 1, 2005 to  
 4 September 30, 2008, was not supported by substantial evidence. The ALJ properly  
 5 found that Plaintiff was capable of performing light level work, with some  
 6 restrictions and properly found that there are jobs that exist in significant numbers  
 7 in the national economy that Plaintiff can perform, namely office cleaner,  
 8 electronics worker, and small products assembler.

9 Accordingly, **IT IS HEREBY ORDERED:**

- 10 1. Plaintiff's Motion for Summary Judgment, ECF No.13, is **DENIED**.  
 11 2. Defendant's Motion for Summary Judgment, ECF No.18, is **GRANTED**.  
 12 3. The decision of the ALJ is **affirmed**. The District Court Executive is  
 13 directed to enter judgment in favor of Defendant and against Plaintiff.

14 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
 15 file this Order and provide copies to counsel, and **close the file**.

16 **DATED** this 30<sup>th</sup> day of July, 2013.

17  
 18 *s/Robert H. Whaley*

19 ROBERT H. WHALEY  
 20 United States District Judge

21  
 22 \_\_\_\_\_  
 23 the knee.

- 24 4. Injured left knee in motorcycle accident (Dr. Green, Tr. 327).  
 25 5. Injured knee by hyper-extending it when he jumped from a burning truck  
 26 with a hundred pounds of body armor (Dr. Zechmann, Tr. 317).  
 27 6. Injured knee when it was caught between a door on a truck. (Testimony  
 28 at hearing)

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